I630.7
Uc-1024
c.3

Water in illinois use and pollution laws

by n. g. p. krausz

circular 1024

university of illinois at urbana/champaign
college of agriculture cooperative extension service

17513783

Water is classified by location — in watercourses, on the surface, and in the ground. Your right to use water varies with its location at the time you withdraw or divert it.

Natural Watercourses

Definition

Streams are natural watercourses, and may range in size from large rivers to small channels of water that flow most of the year. If the water flows only during rainy seasons, it is not a natural watercourse, and is treated as surface-drainage water. Springs that flow in defined channels and artificial ditches that replace natural watercourses usually are treated by the law as natural watercourses.

Lakes and ponds that have an inlet and outlet of flowing water are natural watercourses. But a lake or pond that is entirely surrounded by your land and does not connect with a stream is not a natural watercourse, and is classified as surface-drainage water.

Use by Riparian Owners

Owners or tenants of land next to a natural watercourse have riparian rights to use the water for natural wants, commercial purposes, recreation, and other uses, but these rights are limited by the rights of other riparian owners.

Natural wants include water for drinking, cooking, and other household needs, and for at least enough livestock

7332755

630.7
C-1024
.3

for domestic use. There is no restriction upon the use of water for natural or domestic needs unless the stream divides two properties. In that case, the water may have to be shared equally by the two landowners.

A riparian owner has the right to use only a fair share of water for commercial purposes. These may include farm irrigation, watering a herd of animals, water for processing products, and for manufacturing. Another way the courts have stated the rule is that riparian owners have an equal right to use water that is not needed for natural wants and in such amounts as are considered reasonable, considering the needs of downstream users.

Actions or uses that may legally injure other riparian owners include materially diminishing or accelerating the flow, using more than a fair quantity, detaining and releasing water, altering normal flow patterns, polluting, backing up water onto neighboring property, and diverting the stream from its natural channel. If such actions are open, adverse, and continuous for 20 years without action on the part of the injured party, they could result in a right to legally continue the injurious use.

Use for Hunting, Fishing, and Swimming

The right to hunt, fish, and swim, and use for other forms of recreation accompanies ownership of the land under the water. If the adjoining landowner holds title to the bed of the stream or lake, he may use the water for recreation and exclude others from doing so. If he owns land only on one side of the water, he ordinarily owns the bed only to the center thread. Adjoining owners usually have title to the beds of streams and lakes, except for meandered or navigable lakes.

The question of the public's right to use navigable streams for recreation is not settled. The rule making the right dependent on ownership of the bed was stated by a court in 1905. But another case indicated that there may be exceptions, such as when "fishing rights are a well-established usage."

ILLINOIS STATE LIBRARY
REFERENCE

Use by Nonriparian Owners

The law is not clear on the rights of those who do not own land adjoining a watercourse. It may be possible for the water to be used on nonriparian land, and the courts have mentioned the possibility of selling or leasing riparian rights. Nonriparian landowners who purchase or otherwise obtain lawful access to a watercourse may possibly be permitted to use its waters, at least as long as this use does not encroach upon the rights of riparian owners. It is highly advisable for nonriparian owners to obtain advice from legal counsel before withdrawing stream or lake water for use on their land.

Use by the Public

Citizens have the right to hunt, fish, swim, etc. on meandered or navigable lakes, and probably on larger navigable streams and rivers. Meandered lakes are lakes that were outlined on their maps by the federal surveyors when they surveyed the Northwest Territory, placing title to the beds of these lakes in the State.

Navigable streams and lakes are subject to an easement of navigation, giving the public the right of transportation over the water. To be considered navigable, the stream or lake must be naturally capable of transporting enough boats used for commercial purposes long enough during the year to be of some practical value. The government also has the right to make improvements for navigation and to exercise certain controls and impose restrictions on the use of navigable waters.

Surface-Drainage Water

Surface-drainage water includes all water not in streams or lakes, and is usually dispersed over a wide area. It includes the overflow or flood waters of streams and watercourses.

You may use or sell all surface water that drains or falls onto your property. Any impounded surface water may be allowed to drain from your property at the place where it would naturally flow, even though the quantity flowing to a lower landowner is in this way increased. But the increase should not be against the interests of good husbandry or cause destruction of lower lands. The test of reasonableness must be met with regard to the time and to the amount of water released.

You may not pump surface water back on higher land or cause it to drain onto different land than it naturally would. It must not be polluted so as to cause a nuisance to others, nor may it be used maliciously so as to injure others.

Ground Water

All water in the ground, except well-defined underground streams (which are subject to the same rules that govern surface watercourses), is called *percolating ground water.*

A landowner may use any amount of ground water taken from a well on his own land, even though this use deprives others of their supply. There are certain limitations: a user of ground water may not unlawfully pollute or maliciously deplete the supply; and before drilling a well that will penetrate the subsurface below the glacial drift, the owner must obtain a permit from the State Department of Mines and Minerals and file a log of all drilled wells with the State Geological Survey Division.

The question as to whether ground water can be sold is not clearly answered by the law. One court decision indicates that a landowner "owns" ground water rather than merely a right to its use. If this is a correct statement of the law, then the sale of ground water would seem to be permissible.

Water-Use Control by State Agencies

Several state agencies have limited authority to regulate water use. The Department of Public Works and Buildings has jurisdiction over any interference with the use of navigable waters and other public waters of the state. Lakes and streams that discharge into navigable waters may be included as public waters. A permit must be obtained from the Department to erect or make any structure, fill, or deposit in any public waters. (Similar jurisdiction over navigable waters of the United States is exercised by the U. S. Army Corps of Engineers.) The Environmental Protection Agency and the Pollution Control Board have jurisdiction and control over the use of water for the disposal of wastes.

Many states have adopted comprehensive laws that regulate the use of water. Usually these laws do not impair existing rights such as those of a riparian landowner, but they do regulate the use of publicly owned water through a permit system. It is likely that Illinois will eventually adopt a water-use code because shortages appear to be more serious each year.

Pollution Control Laws

Water pollution may be controlled through legal action taken by those injured, through criminal prosecution, and by government regulatory agencies.

Upstream landowners are held responsible for the disposition of sewage or wastes that cause pollution. If a downstream owner can show injury from such pollution, he has a right to take legal action for damages. If the pollution is substantial and creates a nuisance, he may be able to obtain a court injunction to stop the pollution.

Under the criminal code, it is possible for a person to be charged with reckless conduct if pollution endangers the safety of persons using the water. A charge of criminal damage to property may also be brought against persons causing the pollution.

Government agencies at the federal, interstate, and state levels are also responsible for pollution control. At

the federal level, the Environmental Protection Agency establishes water-quality standards and approves state standards. The Department of Justice enforces the federal standards, and upon request can assist the states in enforcing theirs. Interstate agencies assist in controlling pollution in the Great Lakes and along interstate rivers.

The Pollution Control Board is the primary Illinois water-pollution control agency. It issues regulations under the Illinois Environmental Protection Act, and adjudicates complaints against violators of the Act. The Illinois Environmental Protection Agency investigates pollution complaints, maintains monitoring devices throughout the State, and presents evidence of violations to the Pollution Control Board. The Illinois Attorney General enforces the Board's orders.

A 1969 law gives the Attorney General independent authority to take action against polluters. He can take immediate action to restrain pollution without waiting for a complaint to be brought before the Pollution Control Board or other appropriate agencies.

your right to use water depends on

The source of supply
Your particular use
Where your land is located
The amount of water available
Needs and uses of other persons

pollution control is exercised by

Lower riparian owners
Local public agencies
Government agencies at state, interstate, and federal levels

UNIVERSITY OF ILLINOIS-URBANA
3 0112 121969973

This publication was prepared by N. G. P. Krausz, Professor of Agricultural Law, Department of Agricultural Economics, with the assistance of Larry Gutterridge, Graduate Assistant in Agricultural Law.

Urbana, Illinois December, 1970

Issued in furtherance of Cooperative Extension Work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. JOHN B. CLAAR, *Director,* Cooperative Extension Service, University of Illinois at Urbana-Champaign.

10M—12-70—16480